

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

HUDSON-RPM DISTRIBUTORS, LLC

Plaintiff,

v.

BOWDITCH & DEWEY, LLP, DAVID P.
GROSSI, AND TERRENCE J. BRIGGS,

Defendants/
Third-Party Plaintiff,

v.

MARCUM, LLP

Third-Party Defendant,

Case No. 4:19-40095

**DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO FILE A
SUR-REPLY IN FURTHER OPPOSITION TO DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

The Defendants request that this Court deny the Plaintiff's motion for leave to file a sur-reply. Sur-replies are disfavored and can be used only to address new issues raised in a reply brief that could not have been reasonably anticipated. They are not allowed as a matter of right, and they are not designed to give a party the last word. Here, the Plaintiff has not identified any new issues raised in the Defendants' reply brief that the Plaintiff could not reasonably have anticipated. The Plaintiff says, rather generically, that its proposed sur-reply "would be focused on issues addressed in the Defendants' reply brief concerning Defendants' allegations regarding the measure of damages and the necessity of expert testimony concerning damages." The measure of damages and the need for expert testimony on damages, however, are not new issues. They are the sole grounds for the Defendants' motion for summary judgment and the issues have been briefed

extensively by the parties. The Defendants' reply brief does not raise any new issue at all, let alone an issue that would warrant a sur-reply. The Plaintiff's motion should be denied.

DEFENDANTS,
BOWDITCH & DEWEY, LLP
By its attorneys,

/s/ William R. Covino

George A. Berman, Esq., BBO # 040200
Allen N. David, Esq., BBO # 115000
William R. Covino, Esq., BBO # 673474
Christina T.E. Staffiere, Esq. BBO # 699041
PEABODY & ARNOLD LLP
600 Atlantic Avenue
Boston, MA 02210-2261
Tel. (617) 951-2100
gberman@peabodyarnold.com
adavid@peabodyarnold.com
wcovino@peabodyarnold.com
cstaffiere@peabodyarnold.com

Dated: August 2, 2022

CERTIFICATE OF SERVICE

I, William R. Covino, hereby certify that on this 2nd day of August, 2022 I served a copy of the foregoing document, by causing a copy thereof, to be sent electronically, through the ECF system, to the registered participants in this case, as identified on the Notice of Electronic Filing (NEF).

/s/William R. Covino

William R. Covino

2356083